



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/546,439	04/10/2000	Mikael Linden	442-009325-US(PAR)	3336

7590 05/25/2004
Perman & Green
425 Post Road
Fairfield, CT 06430

EXAMINER

HENEGHAN, MATTHEW E

ART UNIT	PAPER NUMBER
----------	--------------

2134

DATE MAILED: 05/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/546,439	Applicant(s) LINDEN ET AL.	
	Examiner Matthew Heneghan	Art Unit 2134	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2004.
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1-16 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☒ The drawing(s) filed on 10 April 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. In response to the first Office Action, Applicant has amended claims 1, 8, 9, and 12, and added claims 13-16. Claims 1-16 have been examined.

Drawings

2. Applicant has stated in the amendment that Figure 1 has been amended (see Paper No. 6, p. 7), but no new drawings were found with the amendment filed 2 April 2004.
3. Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance. The figure describes an implementation of the Wireless Application Protocol, which is well-known in the art.
4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign mentioned in the description: "1" on page 5, line 7. A proposed drawing correction or corrected drawings are required

in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "10" has been used to designate both Client in figure 1 and wireless terminal in figures 2 and 3. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

6. All previous objections to the specification are withdrawn.

Claim Rejections - 35 USC § 112

7. In view of Applicant's amendments, all previous rejections under 35 U.S.C. 112 are withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 2134

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 5, 8, 9, 11, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by European Patent Application No. 848,316 to Angelo et al.

As per claims 1, 8, 9, and 12, the secure information transmission system disclosed by Angelo allows the acquisition of a driver module (such as a BIOS image) via a network that has been digitally signed by its originator (see column 2, lines 46-60). It is inherent that such a module being installed is modified, in order to remove the attached signature (see column 6, line 21 to column 7, line 10).

As per claim 5, BIOS modules are inherently composed of byte-compiled code.

As per claim 11, Angelo discloses that the network element may be a network server.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 6, 7, and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over European Patent Application No. 848,316 to Angelo et al.

Regarding claims 6 and 7, Angelo discloses the use of identifying information in the signature that encrypted using hashes and keys (such as RSA), but does not specify that the identifying information is in the form of a character string.

Official notice is given that the use of character strings as identifying information is well-known in the art, as strings may be used to uniquely identify a sender.

Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to use character strings as identifying information in digital signatures, in order to uniquely identify a sender.

Regarding claims 13 and 14, the invention Angelo is used to receives commands for any portion of the BIOS and includes a network connection, but Angelo does not specifically state that code for the network interface from a vendor may be received via this process.

Official notice is given that network interfaces are retrieved by computers directly from vendors, in order that the computer have the most efficient available driver for its network interfaces.

Therefore it would be obvious to one of ordinary skill in the art to use the process disclosed by Angelo to receive the commands for the network interface from the vendor, in order that the computer have the most efficient available driver for its network interfaces.

Regarding claims 15 and 16, a network interface driver constitutes application data and driver code. Any collection of functions is a library, so the first and second control libraries are simply where the functions are stored in the system.

10. Claims 2-4 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over European Patent Application No. 848,316 to Angelo et al. as applied to claims 1 and 9 above, and further in view of U.S. Patent No. 5,418,524 to Fennell.

Angelo does not disclose that software upgrades may be done using wireless equipment.

Fennell discloses the upgrading of terminal software using a radio modem (see abstract), and further suggests that an apparatus for doing so is needed, as alternative methods of upgrading such software requires a large amount of user tasking.

Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to implement the system disclosed by Angelo using a radio modem, as disclosed by Fennell as alternative methods of upgrading radio modem software requires a large amount of user tasking.

Response to Arguments

11. Applicant's arguments filed 2 April 2004 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (as described below) are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Regarding Applicant's arguments with respect to claim 1 (see pp. 11-12), it is noted that Applicant's specification refers to commands in the context of compiled executable code (see p.6, lines 18-30), and there is nothing that suggests that a command must represent data sent to the processing means. Additionally, the invention as claimed does not mandate that the processing and control means be separate. The origin is verified with the help of the electronic signature, as the signatures ultimately trace back to the software vendor (see Angelo, column 2, lines 30-31). BIOS images comprise a set of functions that control a processor; in Angelo's case, this code can only be loaded into the target system (and subsequently executed) if the signature has been verified. The segregation of the software components that is argued cannot be construed from the claims as written.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

Art Unit: 2134

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew E. Heneghan, whose telephone number is (703) 305-7727. The examiner can normally be reached on Monday-Thursday from 8:00 AM - 4:00 PM Eastern Time. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Morse, can be reached on (703) 308-4789.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
P.O. Box 1450
Alexandria, VA 22313-1450

Or faxed to:

(703) 872-9306

Hand-delivered responses should be brought to Crystal Park 2, 2121 Crystal Drive, Arlington, VA 22202, Fourth Floor (Receptionist).

Application/Control Number: 09/546,439
Art Unit: 2134

Page 9

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

MEH *MEH*
May 22, 2004

Gregory Morse
GREGORY MORSE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100